

Court battle over kit to detect new HIV strain

Singapore biotech firm appeals against judgment upholding claim of French pharmaceutical company and institute

By **TAN OOI BOON**

A NEW strain of HIV, the virus that causes Aids, is at the heart of a multi-million-dollar biotech battle in the High Court here.

Two parties are fighting over the rights to make medical kits to detect the new virus, in perhaps the first case of its kind in the world, lawyers said.

France's Pasteur Institute, a non-profit foundation, and BioRad Pasteur, a pharmaceutical company,

kits without their permission.

Judicial Commissioner Tay Yong Kwang upheld their claim recently and issued an injunction to stop the Singapore company from making the test-kits.

He also ordered Genelabs to pay damages that are expected to run to millions of dollars. The sum has yet to be determined.

The judgment is a legal breakthrough for genetic research as it confirms the trend that new discoveries of

drugs, for a fixed period of say 20 years.

But the orders will not be carried out just yet. Genelabs has appealed to the Court of Appeal and expects the case to be heard later this year.

JC Tay's judgment will be studied closely by lawyers in Europe as the French foundation has similar lawsuits pending in Italy and other countries.

In this case, the new virus strain, HIV-2, was discovered by the foundation's scientists, who filed a patent registration in January 1987. Before that, the only known



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An Aids virus different from the one above is at the heart of the multi-million-dollar legal battle.

Aids virus was HIV-1.

The scientists stumbled on the new strain after they found that certain African Aids patients were not hit by the HIV-1 virus.

They surmised that another virus was the cause, and went on to discover HIV-2. Later, they also invented the kit to detect this strain.

The discovery prompted the World Health Organisation (WHO) to make it compulsory to screen for HIV-2 also in blood tests.

In the present dispute, the French claimants found

out some time in 1996 that Genelabs was making HIV-2 test-kits.

In 1998, they instructed their Singapore lawyer Tony Yeo of Drew & Napier to conduct further checks. Later, private investigators were also hired to buy the kits, which were found to have infringed the claimants' patent.

In his judgment, JC Tay noted that the claimants had a valid right because they developed a process to detect a new virus. "If the virus is new or novel, the process to detect it must have the same attribute."

The defendant had argued that the claimants should have started their action earlier if they wanted to protect their rights.

But the judge said the

Late action is no argument